IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.1592 of 2003

Date of Decision: November 20, 2006

Court on its own motion Versus Sube Singh

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr.Kapil Aggarwal, Advocate.

Mr.Yogesh Goel, Advocate.

Mr.Vikas Chaudhary, AAG, Haryana.

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Hon'ble Hemant Gupta J., while on inspection of Sessions Division Narnaul, had come across the record of Sessions Case No.2 of 2002, titled State Versus Dhansi Ram and on perusal thereof, his Lordship was of the view that the judgment of the Addl.Sessions Judge, Narnaul suffered from material illegality and irregularity. The reasons in this regard, as observed by the Hon'ble Judge, are re-produced below:-

> "The Additional Sessions Judge found that there is no evidence that the accused had made a demand of Rs.6000/- in the presence of the witnesses Vijender Singh, Yad Ram and Babu Ram and that there is no evidence of said amount of Rs.6000/- having been accepted by the accused as illegal gratification for entering the mutation in favour of Sube Singh. The trial court has concluded "that from the evidence on record it is not proved that the accused demanded and accepted Rs.6000/- as illegal gratification" but the said finding is without any discussion and in fact Trial court jumped

to the conclusion that the accused has not accepted the sum of Rs.6000/-. There are statements of Pws. Shri Vijender Singh, Yad Ram and Babu Ram, who have no enmity to depose against the accused, that a sum of Rs.6000/- was paid in their presence and thus, there would be presumption under section 20 of the Prevention of Corruption Act, 1988 that gratification was as a motive or reward and discloses an offence under section 7 of the Act."

Accordingly, a direction followed for issuing a show cause notice to the accused acquitted in the case as to why the judgment of the Addl.Sessions Judge be not set-aside. Another show cause notice was directed to be issued to the complainant, Sube Singh, as to why the proceedings for perjury be not initiated against him for giving false statement on oath. This reference was treated as a revision and placed on the judicial side.

Notices were issued to the parties and the case has been heard. As observed in the order, the evidence in the form of statements of P.Ws. Vijender Singh, Yad Ram and Babu Ram were available on record, which indicated that a sum of Rs.6000/- was paid to the accused in their presence. It was viewed that this evidence had not been properly appreciated and the trial court had come to an abrupt conclusion by recording that the evidence on record did not prove that the accused had demanded and accepted Rs.6000/- as illegal gratification.

Since the accused in this case has been acquitted after

appreciation of prosecution evidence, as such the balance is required to be struck between the right that has accrued to the accused on account of his acquittal and the prosecution case/evidence, which has statedly not received proper appraisal at the time of decision. The record in this case was summoned and has been perused. During the course of hearing, it transpired that no appeal has been filed by the State in this case against the acquittal of the accused. In that sense, the findings of the trial court acquitting the accused, is not under any challenge. Section 397 Cr.P.C. would leave ample powers with the High Court to call for and examine the record of any proceedings before any inferior criminal court. This section when read with Section 401 Cr.P.C., would clearly show that High Court has wide discretion to interfere in any matter either by calling the record or even if it otherwise comes to its knowledge. Of course, no order is to be made under this section to the prejudice of the accused without giving opportunity of hearing to him. This petition accordingly is being decided.

A perusal of the record would show that Sube Singh complainant had not supported the prosecution case. This witness even denied having given application and said that it was obtained by police. He also went on to state that the accused never demanded any amount from him as gratification and that he had never paid a sum of Rs.6000/- to the accused. The evidence of other witnesses, like Vijender Singh (S.D.M.Narnaul), Yad Ram (Inspector Vigilance) and Babu Ram (shadow witness) fully supported the prosecution story. Vijender Singh had signed the currency notes which were recovered. The trial Court did not rely on their evidence on the

ground that demand for Rs.6000/- was not made in their presence. Babu Lal shadow witness had not heard the conversation between complainant and the accused. It is in this background, it was held that demand for illegal gratification was not made out in the absence of evidence as the complainant had resiled from his statement.

I have heard the counsel for the parties and have perused the record.

It is required to be kept in mind that any comment made at this stage may damage the case of either of the parties. The evidence recorded in this case is already on the record. The same had been appreciated by the trial Court while returning a verdict of acquittal. The main reason in acquitting the accused by the trial Court appears to be that the complainant had not supported the case of the prosecution and hence the demand of illegal gratification is not proved by prosecution beyond doubt. This approach or reasoning cannot be said to be suffering from any serious infirmity. Objections seem to be that the fact of complainant resiling from his complaint should have received proper attention of the court in the light of other evidence available on record. The Court trying the offence could be expected to see if there was sufficient evidence in the absence of evidence of the complainant. He had obviously been won over and had not supported the prosecution for oblique reasons. The effect of absence of the evidence of the complainant, which is the root of the case, was also required to be seen and appreciated while deciding the case. I should say this much and nothing more lest, it may prejudice the case of either side. Evidence in this case as such may need a re-look and fresh appreciation. This revision is allowed and

the order of acquittal of the accused is set-aside. The case is remanded back to the trial Court for deciding it afresh in the light of evidence that is already on record. As a matter of abandoned caution, it is reiterated here that the trial Court would carry out this exercise uninfluenced by any observation that may have been inadvertently made or recorded while setting-aside the acquittal and remanding this case back to the Court. These observations have been made for the purpose of passing this order and nothing more. The direction that the show cause notice issued to the complainant for showing cause as to why the proceedings for perjury be not initiated against him should await the outcome of the present case though it may not have any effect on him in view of the manner in which he has deposed in this case.

The present revision is allowed in the above terms.

November 20, 2006 (RANJIT SINGH)
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